

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-164-W - ORDER NO. 1999-664  
SEPTEMBER 20, 1999

IN RE: Application of Upstate Water Resources, Inc. ) ORDER APPROVING  
for Approval of an Establishment of Water ) CONTRACTS, RATES,  
Rates and Charges. ) AND CHARGES

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Upstate Water Resources, Inc. (Upstate, the Company, or the Utility) for approval of contracts for provision of water in Cedar Creek and Keowee Bay Subdivisions, and approval and establishment of rates and charges for the provision of water in Bay Ridge Subdivision. The Company's Application was filed pursuant to S.C. Code Ann. Section 58-5-240 (Supp. 1998) and 26 S.C. Regs. 103-821.

By letter, the Commission's Executive Director instructed the Company to publish a prepared Notice of Filing, one time, in a newspaper of general circulation in the area affected by the Company's Application. The Notice of Filing indicated the nature of the Company's Application and advised all interested parties of the manner and time in which to file appropriate pleadings. Additionally, the Company was instructed to directly notify the Presidents of the homeowners' associations for the Cedar Creek and Keowee Bay Subdivisions. The Company filed materials indicating that it had complied with these instructions. A Petition to Intervene was filed by the Bay Ridge Property Owners

Association (the Association).

The Commission Staff made on-site investigations of the Company's water system, audited the Company's books and records, and gathered other detailed information concerning the Company's operations.

On August 12, 1999, a public hearing concerning the matters asserted in the Company's Application was held in the Commission's hearing room. Appearing for the Company was Larry Schmid, the Company's President. The Intervenor Association was represented by Frank R. Ellerbe, III, Esquire. The Association presented the testimony of Vincent Cervera. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented the testimony of Sharon G. Scott and Charles A. Creech. Don Klein spoke as a public witness.

Upon full consideration of the Company's Application, the evidence presented at the hearing, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Upstate Water Resources, Inc. is a water utility operating in the State of South Carolina and is subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. Section 58-5-10 (Supp. 1998), et seq.
2. The Company operates three water systems in the Cedar Creek subdivision in Pickens County, and the Keowee Bay and Bay Ridge subdivisions, located in Oconee County, South Carolina.
3. The present case is an establishment case.

4. The Company is seeking approval of a contract rate for the Cedar Creek and Keowee Bay subdivisions, and a flat rate of \$40.00 per month per tap for water service for the Bay Ridge Subdivision. The Company also seeks approval of a tap fee of \$800.00, a reconnect fee of \$75.00, a returned check fee of \$35.00 and a late fee of 1 ½% per month.

5. The highest flat rate previously approved by this Commission for water service is \$32.00 per month.

6. The appropriate test period for the purposes of this proceeding is the twelve-month period ending December 31, 1998.

7. Using Staff's calculations and the requested rate of \$40.00 per month, the Company would generate \$33,840 in Total Operating Revenues. The Commission, however, only grants a rate of \$32.00 per month, which results in Total Operating Revenues of \$32,688.

8. Although the Commission Staff had originally proposed \$53,191 in Total Operating Expenses, this Commission will approve only \$51,175, because of a modification in the depreciation adjustment from \$3,915 to \$1,899, which removes the depreciation expense attributable to certain land owned by the utility.

9. The Company requests approval of a contract rate with Cedar Creek of \$950 per month, and Keowee Bay of \$1,390 per month, as well as of said contracts themselves.

10. The Commission will use the operating margin as a guide in determining the lawfulness of the Company's proposed rates and the fixing of just and reasonable rates.

11. A fair operating margin that the Company should have the opportunity to earn is (56.56%), which is produced by the appropriate level of revenues and expenses found reasonable and approved herein.

12. The rate designs and rate schedules approved by the Commission as described herein are appropriate and should be adopted.

13. The rates and charges depicted in Appendix A, attached hereto, and incorporated by reference, are approved and effective for service rendered on and after the date of this Order.

14. The Motion to Dismiss the Application as to the Bay Ridge Subdivision should be denied.

### **DISCUSSION**

Larry Schmid, President of the Company testified. Schmid noted that in 1994, Upstate Water Resources purchased three water systems from Ingram Enterprises for \$125,000. These were Keowee Bay, Cedar Creek, and Bay Ridge. At that time, the Company agreed to maintain the systems for the same amount that they had been paying. Each homeowners' association was to be billed a monthly fee which they would pay from the annual dues collected to cover this cost. Schmid states that there are 303 lots between the three subdivisions. Bay Ridge has 68, Keowee Bay has 135, and Cedar Creek has 100 lots. According to Schmid, he would continue to bill Keowee Bay and Cedar Creek as per

contracts with the homeowners associations of those subdivisions, and bill the homeowners in Bay Ridge, if approved at \$40 per month flat rate. Bay Ridge presently has 12 lots occupied. Schmid testified that, in order to arrive at the Company's rate request, he took the annual expenses related to the water systems and divided by 12 months to get a monthly expense. He then divided by 303 total lots, which gave a per lot per month cost. He then multiplied this amount by 68 lots for Bay Ridge to arrive at the monthly costs for the subdivision. Also according to Schmid, the \$40.00 per month rate will allow the Company to maintain the water system according to DHEC standards as the system grows. Schmid also testified that the Utility had owned 3 lots.

Vincent Cervera, Treasurer of the Bay Ridge Property Owners Association testified in opposition to the proposed rate for Bay Ridge. Cervera points out the Company's failure to comply with Commission Regulation 103-720, which requires service by meters. Cervera also states that the proposed rate of \$40.00 per month is excessive, and the rate structure was unfair to Bay Ridge property owners because they were being charged on a per lot basis, wherein Keowee Bay and Cedar Creek were being charged on a lump sum contractual basis. Cervera further alleges that the proposed tap fee charges had not been properly justified.

With regard to the excessiveness of the proposed monthly charge, Cervera states that the fact that only 13 homes had been constructed out of the 68 lots should not justify those homeowners having to bear all of the expense of the utility while the utility is built out.

Sharon Scott, an accountant/fiscal analyst for the Commission also testified. Scott noted that, since the Company had been operating since 1994, the Staff was able to verify a majority of the expenses to the Company's books and records. Scott testified that several of the expenses were allocated to reflect the portion associated with Schmid's other businesses. Staff examined receipts to support the Company's expenses. The Company provided a cost of \$800,000 for the original cost of plant in service. Scott made a Plant Acquisition Adjustment of \$675,000 to reflect the difference between the original cost of \$800,000 and the purchase price of \$125,000. The net effect of the adjustment only allows depreciation expense on the purchase price of \$125,000. In her testimony, Scott allowed depreciation on all of the Company's property, including the 3 lots owned by the Utility.

Charles Creech, Associate Engineer for the Commission, also testified. Among other things, Creech noted that Staff worked in the field surveying customers in the three subdivisions, and also investigated the wells, tanks and pump houses owned by the Company. Customers in the Bay Ridge subdivision seem to be experiencing more service problems. One of the four full time residents had no problems. However, two of the other families experienced low pressure, green foam in whirlpool, blue stains in bathroom fixtures, and erratic pressure (20-100 PSI). There was a concern from those residents that there was not a posted telephone number which could be used to contact the Company, and that, sometimes, there was a sediment and a film on the water. The residents state that Mr. Schmid responds quickly to problems that may develop with the system.

Don Klein, President of the Cedar Creek homeowners association testified as a public witness.

At the close of the evidence, the Bay Ridge Property Owners Association moved that the Application be dismissed as to the Bay Ridge subdivision, with the further motion that Upstate file a revised Application in accordance with our Regulation 103-720. Bay Ridge believes that Upstate should propose a rate structure with a monthly basic facilities charge and a usage or commodity charge. Further, Bay Ridge states that the depreciation expense is in question, because of Staff's inclusion of three lots in depreciable property, which is another reason to dismiss the Application as to Bay Ridge.

We deny the Motion. First, the language of Regulation 103-720 states in part: "Service shall be measured by meters furnished by the utility, unless otherwise ordered by the Commission...." We do not hold that this is an absolute prohibition against the granting of flat rates in appropriate circumstances. We note that the "meter" language is followed by language stating "unless otherwise ordered by the Commission." We think that there may be reasons wherein this language would come into play. For example, in a situation such as the case before the Commission, wherein there are only 12-13 houses in a subdivision of 68 lots, we believe that the expense for the utility to install meters is prohibitive, and that a flat rate is appropriate.

The other major question raised by this Motion is that of the depreciation expense. We agree with the Association that the three pieces of real estate owned by the Utility should be removed from depreciable property, in that land is not depreciable. The testimony varied greatly as to the value of the lots in question. The testimony yielded

values of \$30,000-\$40,000 per lot, \$80,000 per lot, or \$125,000 per lot depending on the lot's location in the subdivision. After due consideration, we believe that an average value for the lots would be \$80,000 per lot, and we adopt this value for purposes of our depreciation expense calculation. Sharon Scott testified that the estimated original cost of plant was \$800,000. Removal of the 3 lots for a total of \$240,000 (at \$80,000 each) yields a balance of \$560,000 for plant and equipment. Thus, plant and equipment yielded 70% of plant, and land 30%. To calculate the adjustment, we take 70% of the purchase price of land, plant, and equipment of \$125,000 and get a depreciable base of \$87,500.

Multiplying this by the composite depreciation rate of 0.05375 yields a depreciation expense of \$4,703. With regard to the Company truck, the purchase price was \$22,896. Using a depreciation rate of 0.2, the depreciation expense may be calculated as \$4,579. Adding \$4,703 and \$4,579 yields total depreciation expense of \$9,282. Subtracting depreciation expense per books of (7,383) yields a new depreciation adjustment of \$1,899. We hold that this adjustment recognizes the non-depreciable nature of the lots in question, and declare that \$9,282 shall be the recognized total depreciation expense.

Based on these grounds, the Motion of the Association must be denied, and we will proceed to establish a rate for Bay Ridge at the appropriate point in this Order.

With regard to the remaining adjustments and expenses recommended by the Commission Staff, we believe that these are basically unopposed, so we adopt the remainder of the Commission Staff's accounting adjustments for use in this proceeding.



**CONCLUSIONS OF LAW**

1. The Company is a water utility providing water service in Pickens and Oconee Counties in South Carolina. The Company's operations in South Carolina are subject to the jurisdiction of the Commission pursuant to S. C. Code Ann. 58-5-10 et seq. (1976, as amended). We hereby grant establishment of a service area consisting of the Cedar Creek, Keowee Bay, and Bay Ridge subdivisions in their respective counties.

2. A fundamental principle of the ratemaking process is the establishment of an historical test year as the basis for calculating a utility's revenues and expenses, and consequently, the validity of the utility's requested rate. While the Commission considers the utility's proposed rate based upon occurrences within the test year, the Commission will consider adjustment for any known and measurable and out-of-test year charges and expenses, revenues, and investments, and will also consider adjustments for any unusual situations which occurred in the test year. In light of the fact that the Company and Staff propose the 12-month period ending December 31, 1998 as the appropriate test year, and Staff has audited the Company's books for that test year, the Commission concludes that the 12-month period ending December 31, 1998 is the appropriate test year for purposes of this rate request.

3. The Commission concludes that each of the Staff adjustments are appropriate, and are hereby adopted by the Commission, with the exception of the depreciation expense, which is hereby modified as indicated in the discussion above.

4. There is no statutory authority prescribing the method which this Commission must utilize to determine the lawfulness of the rate of a public utility. For a

water utility whose rate base has been substantially reduced by customer donations, tap fees, contributions in aid of construction, and book value in excess of investment, the Commission may decide to use the “operating ratio” and/or “operating margin” method for determining just and reasonable rates. The operating ratio is the percentage obtained by dividing total operating expenses by operating revenues; the operating margin is determined by dividing the total operating income for return by the total operating revenues of the utility. The Commission concludes that use of the operating margin is appropriate in this case.

5. Based on the criteria laid out in various State and Federal cases and utility texts, the Commission determines that the Company should have the opportunity to earn a (56.56%) operating margin. In order to have a reasonable opportunity to earn a (56.56%) operating margin, the Company will need to produce \$32,688 in total annual operating revenues.

**OPERATING MARGIN**

Operating Revenues	\$32,688
Operating Expenses	<u>51,175</u>
Net Operating Income	\$(18,487)
Customer Growth	<u>-0-</u>
Total Income for Return (Loss)	\$(18,487)
Operating Margin	<u>(56.56%)</u>

6. In order to earn the revenue necessary to earn an operating margin of (56.56%), we hold that a flat rate of \$32.00 per month per customer should be adopted for the Bay Ridge Subdivision. As per the testimony of Staff witness Creech, this is the highest flat rate that we have ever approved for a water utility in South Carolina. We do

not believe that the \$40.00 per month as requested has been justified by the Utility. We note with interest the water quality problems in Bay Ridge attested to by Creech. Because of these problems, we do not believe that we can grant the full rate requested, but only feel justified in granting a rate equivalent to the highest flat rate approved in South Carolina. Further, we do not believe that this will create a financial position for Upstate Water Resources drastically different from the Company's filing. The granting of the \$32.00 per month rate also provides the customers in Bay Ridge some relief from the \$40.00 per month requested by the Company. As stated above, we do not believe that Regulation 103-720 requires us to grant a metered rate only, since the language clearly states "unless otherwise ordered by the Commission." We do, however, approve the contracts for water service to the Cedar Creek and Keowee Bay subdivisions that are presently in force, in that we find them just and reasonable.

7. We hereby approve the proposed tap fee and reconnect fee, however, we do not find it necessary to adopt either the bad check charge request or the late payment amount, since these are covered by statute and regulation, respectively. We find that the Company has provided justification for the tap fee in its Application.

8. We hold that the Bay Ridge Homeowners Association shall furnish the Company a list of names and addresses of Bay Ridge residents so that the utility may bill the Bay Ridge customers directly.

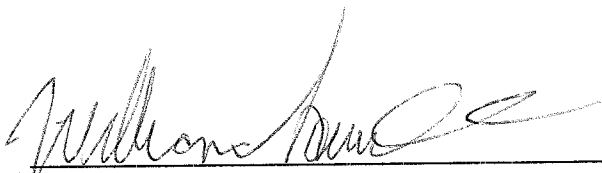
9. We grant the Company a Certificate of Public Convenience and Necessity to operate as a water utility in Pickens and Oconee Counties in the Cedar Creek, Keowee Bay, and Bay Ridge subdivisions.

10. Accordingly, it is ordered that the rates attached as Appendix A are hereby approved for service rendered on or after the date of this Order.

11. It is further ordered that the Company maintain its books and records for water operations in accordance with the NARUC Uniform System of Accounts for water utilities as adopted by this Commission.

12. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
VICE Chairman

ATTEST:

  
Executive Director

(SEAL)

## **APPENDIX A**

**Upstate Water Resources, Inc.**  
**196 W. Ridge Drive**  
**Travelers Rest, SC 29690**  
**(864) 421-7948**

DOCKET NO. : 1999-164-W

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DATE: September 20, 1999

### **BAY RIDGE S/D**

Monthly Water Usage - Flat Rate	-	\$ 32.00
Tap Fee	-	\$800.00
Reconnect Fee	-	\$ 75.00